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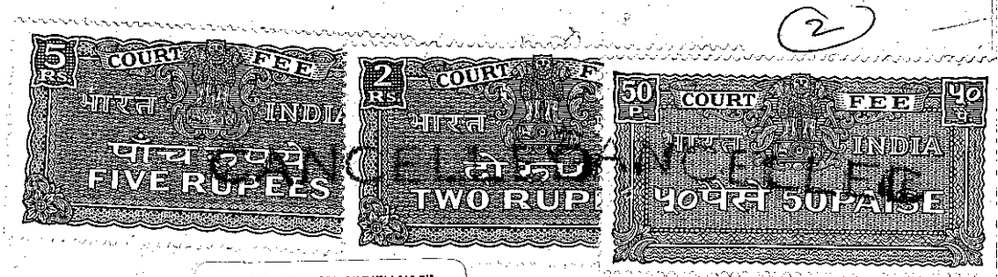

CF 995 211

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

CRI.APPEAL NO. 34 OF 1995

APPELANT :- Dev Singh Gond, aged about 28 years
-ACCUSED S/o Jeevan Singh Gond R/o Village-
Baheramuda, Police Post-Belgahna, P.S.
-Kota, Distt.-BILASPUR . (M.P.)

-VERSUS-

RESPONDENTS- The State of Madhya Pradesh.

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE, 1973.

Filed on 8.1.95
Dy. Registrar

(22)

A.F.R.

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH: HON'BLE SHRI K.H.N. KURANGA, CJ
& HON'BLE SHRI L.C. BHADOO, J

CRIMINAL APPEAL NO.34 OF 1995

JUDGMENT FOR CONSIDERATION

Sd/-
L.C. BHADOO
Judge

HON'BLE THE CHIEF JUSTICE

I agree.

Sd/-
Chief Justice

Post for pronouncement of Judgment: 16th March 2004

Sd/-
L.C. BHADOO
Judge

AFR

(23)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH: HON'BLE SHRI K.H.N. KURANGA, CJ & HON'BLE SHRI L.C. BHADOO, J

CRIMINAL APPEAL NO.34 OF 1995

Accused/Appellant: Dev Singh Gond
Aged about 28 years,
Son of Jeevan Singh Gond,
R/o Village Baheramuda,
Police Post Belgahna,
Police Station: Kota,
District: Bilaspur (CG).

VERSUS

Respondent: State of Chhattisgarh

Present: Shri Arun Kochar , Advocate for the appellant.
Shri Ashish Shukla, Govt. Advocate, for the State/respondent.

JUDGMENT
(Delivered on 16th of March 2004)

The following Judgment of the Court was delivered by

L.C. Bhadoo, J:

Accused/appellant Dev Singh has preferred this criminal appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 being aggrieved by the judgment of conviction and sentence dated 24/10/1994, passed by the learned seventh Additional Sessions Judge, Bilaspur in Sessions Trial No.302 of 1992 whereby the learned Seventh Additional Sessions Judge after holding the accused/appellant guilty of the offence punishable under Section 302 of the Indian Penal Code convicted and sentenced him to undergo imprisonment for life.

(2) Briefly stated the prosecution case for disposal of this criminal appeal is that on 27/06/1992 one Dhan Singh lodged a report at Kota Police Station stating that he is Patel of village Baheramuda. In the morning accused Dev Singh came to his residence and informed that on the previous evening some quarrel took place between him and his uncle Manbhawan Singh (since deceased) and he assaulted his uncle and in the night his uncle Manbhawan Singh died. On this, he called the Kotwar and

the villagers namely Dhan Singh, Dhanman Singh etc. and on enquiry in the presence of all the persons the accused again made extra judicial confession before them to the effect that on the previous evening he assaulted his uncle Manbhawan Singh and due to the assault his uncle died in the night. Dhan Singh and other villagers went to the house of accused Dev Singh and saw the dead body of Manbhawan Singh was lying in the inner room of the house. The injuries were present on his hand, legs and backside and blood clot was also present on the body. The report lodged by Dhan Singh is Ex. P/1. After registering the case the Station House Officer S.L. Singh proceeded to the scene of occurrence and after giving notice to the Panchas he prepared the Panchanama (Ex.P/2) of the dead body of Manbhawan Singh. The dead body of the deceased was sent for post mortem examination to the Primary Health Centre, Kota. Dr. S.K. Verma (PW-10) conducted the autopsy on the dead body of the deceased and prepared the post mortem report Ex. P/15. The dead body of the deceased was handed over to Dhan Singh vide Ex. P/3. Vide Ex.P/4 the plain soil and the blood stained soil were seized from the place where the dead body was lying. The accused gave the memorandum (Ex.P/6) under Section 27 of the Evidence Act during the investigation regarding the weapon of offence - axe and the club and in pursuance of that the accused got recovered the axe vide Ex.P/5 and the bamboo club vide Ex.P/7. The plain soil and the blood stained soil were also seized from the place of occurrence under Ex.P/8. The clothes of the accused were seized under Ex. P/9. The accused was arrested vide Ex. P/10. The clothes of the deceased were also seized vide Ex. P/13. Vide Ex. P/14 the Investigating Officer asked for the opinion of the doctor as to whether the injuries, which were found on the dead body of the deceased, could be caused by the seized axe and the bamboo club. On the overleaf of this requisition the doctor gave his opinion which is Ex.P/14A.

(3) The Police after completing the investigation filed the charge-sheet against the accused/appellant in the Court of Judicial Magistrate First Class, Bilaspur who in turn committed the case to the Sessions Judge, Bilaspur from where the learned Seventh Additional Sessions Judge, Bilaspur received the case on transfer.

(4) The learned Seventh Additional Sessions Judge after hearing the arguments of the Additional Public Prosecutor and the counsel for the accused/appellant and perusing the records was of the opinion that prima facie case was made out to frame charge under Section 302 of the Indian Penal Code against the accused/appellant. Accordingly he framed the charge against the accused/appellant for the commission of the aforesaid offence. The accused/appellant denied the charge and claimed to be tried.

(5) The prosecution in order to prove the charge against the accused/appellant examined in all ten witnesses at the trial. The statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure in which he denied the evidence of the prosecution witnesses and pleaded ignorance about the crime. He further stated that he is innocent and has been falsely implicated in the case.

(6) After hearing the arguments of the learned Additional Public Prosecutor and the learned counsel appearing for the accused/appellant and after relying on the circumstantial evidence adduced by the prosecution, the learned Additional Sessions Judge held the accused/appellant guilty of the offence and convicted and sentenced him as mentioned above.

(7) We have heard Shri Arun Kochar, learned counsel for the accused/appellant and Shri Ashish Shukla, Govt. Advocate, for the State/respondent and perused the records.

(8) As for as the nature of the death of deceased Manbhawan Singh being homicidal is concerned, learned counsel appearing for the accused/appellant has not disputed this fact. Dr. S.K. Verma (PW-10) in his evidence has stated that on 28/06/1992 he was posted as Assistant Surgeon, Primary Health Centre, Kota and he conducted the autopsy on the dead body of the deceased. On examination of the body he found the following injuries:

(a) Diffuse haematoma over back of right elbow with fracture of humerus.

(b) Diffuse swelling left knee all around with fracture of left femur at lower end, as there was deformity and angulation.

(c) Lacerated wound 1.5 cm x 0.5 cm x 0.8 cm over front of left knee. Clotted blood was present.

(d) Lacerated wound 2 cm x 1 cm x 0.5 cm over front of left leg.

(e) Lacerated wound 2 cm x 0.5 cm x 0.8 cm over front of right knee with diffuse swelling over front of right knee with dislocation of patella.

(f) Angulation and deformity left wrist fracture of both bones left forearm.

(g) Haematoma in left temporal parietal and occipital region.

All the injuries could be caused by hard and blunt object and the same were ante mortem. In the opinion of the doctor the cause of death was head injury and multiple fractures and the death was homicidal in nature. The post mortem report is Ex. P/15. Dhan Singh (PW-1) has also stated that accused/appellant Dev Singh made extra judicial confession before him that he assaulted his Uncle Manbhawan Singh. In view of the above evidence, it stands proved that the nature of the death of deceased Manbhawan Singh was homicidal.

(9) As far as the question of involvement of the accuse/appellant in the commission of the murder of Manbhawan Singh is concerned, the whole case of the prosecution rests on circumstantial evidence. There is no eye witness in this case and in order to convict the accused on the basis of circumstantial evidence the prosecution has to prove the offence as per the settled principles laid down by the Hon'ble Apex Court in the case of ***Nesar Ahmed Vs. State of Bihar*** reported in ***AIR 2001 Supreme Court 2416*** i.e. in a case based on circumstantial evidence, before the Court can record conviction, it must satisfy itself that circumstances from

which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point only to the guilt of the accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused.

(10) Now we shall proceed to consider the prosecution evidence in the light of the above principles laid down by the Apex Court. The learned Additional Sessions Jude has convicted the accused/appellant on the basis of the following circumstantial evidence:-

(A) **Extra judicial confession made by the accused before PW-1 Dhan Singh.**

(B) **The dead body of the deceased was found in the inner room of the house of the accused for which no explanation was offered by him.**

(C) **Weapon of offence namely axe and bamboo club were recovered and seized at the instance of the accused/appellant.**

(11) As far as the circumstance namely extra judicial confession made by the accused before PW-1 Dhan Singh is concerned, learned counsel appearing for the accused/appellant argued that the evidence of PW-1 Dhan Singh regarding making of extra judicial confession by the accused before him is not reliable. On the other hand, learned Govt. Advocate supported the judgment of the trial Court.

(12) PW-1 Dhan Singh has stated that accused Dev Singh is his brother. One year prior to the date of recording of his evidence, the

accused came to his house and told him that some quarrel had taken place on the previous evening between him and his uncle deceased Manbhawan Singh in the garden and he had assaulted him and thereafter took him inside his house where he died in the night. He has further stated that on hearing this, he called the villagers and in their presence also the accused made extra judicial confession. In order to verify the fact all of them went to the house of the accused and they saw in the inner room the dead body of Manbhawan Singh was lying. There were injuries on the body and blood clot was also present. Thereafter, he reported the matter to the Police vide Ex.P/1. In order to base the conviction of the accused on the extra judicial confession the first and foremost requirement is that the Court must try to ascertain whether the extra judicial confession was voluntary and true and was not obtained by coercion, inducement or promise of favour as has been held by Hon'ble Supreme Court in ***Gura Singh Vs. State of Rajasthan*** reported in ***(2001) 2 SCC 205***. It has further been held that such voluntary confession can be made sole basis of conviction and corroboration is required by way of abundant caution. Retraction of such confession would not, by itself, weaken the prosecution. In ***Maghar Singh Vs. State of Punjab*** reported in ***1975 Cri. L. J. 1102***, it has been held that the evidence furnished by the extra judicial confession made by the accused to witnesses cannot be termed to be tainted evidence and if corroboration is required it is only by way of abundant caution. Apart from that while scrutinizing the evidence of the witnesses before whom the accused has made extra judicial confession, the Court can also look into those circumstances in which the accused made the extra judicial confession and the person to whom he made the extra judicial confession. In the light of the above principle, on perusal of the records of the present case, it reveals that not only PW-1 Dhan Singh has been produced to prove the extra judicial confession, but PW-2 Dhanwan Singh has also been produced by prosecution, but he has not stated anything about the extra judicial confession made by the accused before him. It has come in the evidence of PW-1 that he is the brother of the accused. Therefore, being a close relative when the dead body of the deceased was lying in the house of the accused he had the occasion to come and disclose to his brother. Moreover, in the cross examination of this witness nothing has been elicited

which makes the evidence of this witness unreliable. There is no reason to disbelieve the evidence of this witness. Being the real brother of the accused there is no reason why he would implicate his own brother without any cause, rhyme or reason. Apart from the above, it has also come in his evidence that the dead body of the deceased was lying in the house of the accused itself and this fact has not been explained by the accused either in his statement recorded under Section 313 of the Cr.P.C. or anywhere else so as to make this fact unbelievable. PW-1 Dhan Singh has categorically stated that on the extra judicial confession being made by the accused he along with other villagers went to the house of the accused where they saw the dead body of Manbhawan Singh and thereafter he went to the Police Station and lodged the report Ex.P/1. This fact finds further support from the first information report (Ex.P/1) in which it is mentioned that the accused made extra judicial confession before PW-1 and thereafter they saw the dead body of the deceased. After recording the report the Station House Officer proceeded to the place where the dead body of the deceased was lying and he prepared the Panchanama (Ex.P/2) of the dead body which bears the signatures of the accused and other witnesses including PW-1 and PW-2. The evidence of PW-1 Dhan Singh is supported by the fact also that the accused himself informed him that he assaulted the deceased during the quarrel. The fact of making extra judicial confession further stands corroborated by the fact that the dead body of Manbhawan Singh with injuries was found in the house of the accused and no explanation has been offered by the accused in this regard.

(13) Now coming to the question of recovery of the weapons of offence namely axe and bamboo club at the instance of the accused/appellant is concerned, PW-9 L.S. Singh, the Investigating Officer, has stated that the memorandum (Ex.P/6) was given by the accused about the axe and bamboo club while he was in custody and in pursuance of that the accused got recovered the axe and the bamboo club which were seized vide Exs. P/5 & P/7. PW-1 Dhan Singh has also proved the above documents. Therefore, in view of the above evidence the recovery and seizure of axe and bamboo club at the instance of the accused/appellant are proved. Dr. S.K. Verma (PW-9) has also stated that the injuries, which

were found on the dead body of the deceased Manbhawan Singh, could be caused by these weapons and his report is Ex.P/14A.

(14) In the memo of appeal one point has been raised on behalf of the appellant that PW-1 Dhan Singh has stated that Ex.P/2 to Ex.P/8 bear his signatures at places marked as A to A. PW-9 L.S. Singh has stated that the father's name of PW-1 Dhan Singh is Dhasiram, whereas there was other Dhan Singh also and the documents viz. Ex. P/4 to Ex.P/8 bear the signature of Dhan Singh son of Anant Singh. Therefore, the recovery becomes doubtful, as both the witnesses have made contradictory statements. Prima facie this point looks attractive but on careful scrutiny of the records we do not find any substance in this argument. First of all PW-1 Dhan Singh who has stated that the memorandums Ex.P/2 to Ex. P/8 bear his signatures at A to A, has not been cross examined on this aspect that the signatures A to A on Ex.P/4 to Ex.P/8 are of some other Dhan Singh and not his signatures. Even otherwise if we look at the Panchanama (Ex.P/2) of the dead body of Manbhawan Singh, one Dhan Singh had put his signature and PW-1 has stated that signature A to A on Ex. P/2 is of his signature. The other Dhan Singh has not been examined by the prosecution in this case and moreover, the signatures at A to A on Exs. P/4 to P/8 are similar to that of the signature at A to A on Ex.P/2. PW-9 L.S. Singh has given this evidence based on the name recorded in Ex. P/4 to Ex.P/8 in which the father's name of Dhan Singh has been mentioned as Anant Singh. Dhan Singh son of Anant Singh had put his thumb impression on Ex. P/2. Therefore, from the record it appears that while mentioning the father's name on Exs. P/4 to P/8 some mistake has occurred and as such father's name has been written as Anant Singh instead of Dhasi Ram. Therefore, for the reasons stated above, we do not find any substance on the point raised in the memo of appeal. It is true that the FSL report and the Serologist report have not been produced in this case in order to find out as to whether there was human blood on these weapons of offence namely axe and bamboo club. But if we connect these weapons with the other circumstantial evidence namely the extra judicial confession which has been mentioned above, these weapons of offence can safely be connected with the murder of the deceased. It is not a case where the

conviction is being recorded solely on the basis of recovery of the weapons of offence. Therefore, in view of the above, we are of the opinion that the trial Court has not committed any illegality in placing reliance on the prosecution evidence while convicting the accused for the murder of Manbhawan Singh. The prosecution has been able to prove the offence based on circumstantial evidence against the accused/appellant and the only inference which can be drawn from the circumstantial evidence that the accused is the only person who committed the murder of Manbhawan Singh. Therefore, we do not find any reason to interfere with the findings recorded by the trial Court.

(15) In the result, the appeal of the accused/appellant has no substance. The same is therefore, liable to be dismissed and it is dismissed.

Sd/-
Chief Justice

Sd/-
L.C. BHADOO
Judge

Brajesh*